

April 10, 2003

MAINE PUBLIC UTILITIES COMMISSION  
Rulemaking for Exemption of Competitive  
Telecommunications Carriers From Certain  
Filing and Approval Requirements (Chapter 212)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

---

**I. SUMMARY**

By this notice we initiate a rulemaking to adopt a new rule (Chapter 212) that will establish exemptions for Competitive Interexchange Carriers (CIXCs) and Competitive Local Exchange Carriers (CLECs) that do not receive universal service funding pursuant to Chapter 288 from certain Maine Public Utilities Commission (Commission) requirements related to financial reporting, stock issuances and other financings, and mortgages and disposal of property. We also propose a minor conforming revision to Chapter 280. Chapter 212 will exempt certain qualified carriers uniformly from regulatory requirements that are no longer necessary in today's competitive environment.

**II. INTRODUCTION**

The Legislature recently granted the Commission the discretion to exempt Maine telephone utilities from certain reporting and approval requirements relating to financial matters. 35-A M.R.S.A. §§ 507, 912 and 1105. These include filing balance sheets annually (35-A M.R.S.A. § 504); approval of stocks, bonds and note issuances (35-A M.R.S.A. §§ 901-911 or Chapter 9); and authorization of sales leases and mortgages (35-A M.R.S.A. § 1101-1104 or Chapter 11). Such requirements were generally designed to protect captive ratepayers of monopoly utilities. In order to exempt a utility from these chapters, the Commission must find that the exemption is in the public interest and will not have a negative impact on competitive markets for telephone service.

We believe that we can safely find that the statutory provisions that we propose to waive by this rule should not apply to CLECs that do not receive universal service funding pursuant to Chapter 288 and to all CIXCs. The term CIXCs is defined for the first time in this rule and includes all interexchange carriers that are not also Incumbent LECs (ILECs). Since CLECs and CIXCs operate in a competitive environment, we do not regulate their rates, and thus the provisions related to rate regulation in Chapters 5, 9, and 11 should no longer apply to them.

The proposed rule will reduce the regulatory burden on the CLECs and CIXCs, which may help to lower their costs and their rates and to make Maine a more attractive state in which to do business. This would serve the public's interest by giving Maine consumers more and less expensive options. The telephone utilities exempt from the chapters in this rule remain subject to all other applicable provisions in Title 35-A M.S.R.A. and Commission Rules.

At this time, we intend to continue to apply these regulatory requirements to the ILECs. We regulate the rates of all ILECs, either by establishing a revenue requirement pursuant to rate of return ("traditional") regulation or, in the case of Verizon, through an alternative form of regulation (AFOR) (i.e., a price cap mechanism), subject to outcome of remand case. Verizon continues to have very substantial market share in those areas where it provides local exchange service, particularly in the residential market. Its local rates are capped because of its near monopoly status and, even though a rate cap makes costs irrelevant, at least temporarily, it may be important at some time to review Verizon's costs. We therefore find it is in the public interest for Verizon to continue to be subject to these approval requirements.<sup>1</sup>

Other ILECs (the independent telephone companies or ITCs) arguably have even greater insulation from competition.<sup>2</sup> Moreover, all continue to be subject to traditional regulation. Because we directly regulate their rates (and must therefore have information concerning their costs), we find, as in the case of Verizon, that it is not appropriate, at this time, to waive these approval request requirements. The required approvals relate to matters that can affect the costs of those utilities.

Verizon and two ITCs provide interexchange service in addition to local exchange service and therefore they are not CIXCs. Interexchange costs are not separated from local costs and, for the reasons stated above, we remain concerned about the overall costs of those carriers. Verizon also has a substantial portion of the competitive retail toll market. Under the existing AFOR, Verizon has unlimited rate flexibility for those rates, but its toll revenues are still potentially part of its revenue requirement.

---

<sup>1</sup> Verizon's AFOR is presently under review pursuant to a reversal and remand by Law Court of the Commission's Order of June, 2001, that revised the AFOR. *Office of the Public Advocate v. Public Utilities Commission*, 2003 ME 23, \_\_\_ A.2d \_\_\_. See *Public Utilities Commission, Investigation into Verizon Maine's Alternative Form of Regulation*, Notice of Further Proceedings Following Remand (March 19, 2003).

<sup>2</sup> All of Maine's ITCs are "rural telephone companies" as defined in 47 U.S.C. § 153(37); therefore, the "rural exemption" of 47 U.S.C. § 251(f)(1)(A) applies. Unless the rural exemption is waived, pursuant to 47 U.S.C. § 251(f)(1)(B), a rural ILEC is not required to provide interconnection to a competitive LEC. Therefore, any actual competition by a CLEC in a rural ILEC service area must be through the provision of its own facilities.

The proposed rule does not exempt CLECs that are eligible for Universal Service Funding (USF) through Chapter 288 from these statutory provisions. We must give greater oversight to their costs because although we do not regulate their rates, we do require a demonstration of need before we approve USF funding.

### III. DISCUSSION OF RULE

#### A. Section 1: Definitions

The definitions of CLEC, ILEC and IXC are taken from Chapters 280 and 288. A "CIXC" is a competitive interexchange carrier that is *not* also an ILEC.

#### B. Section 2: Accounting Requirements, Chapter 5

Pursuant to 35-A M.R.S.A. § 507, the Commission may adopt by rule standards and procedures for granting to a telephone utility or a specified group of telephone utilities and exemption or exemptions from all or specified portions of section 504. Section 504 describes requirements related to the time of closing accounts and filing balance sheets. We propose to exempt all CIXCs and CLECs from Section 504(2) unless they receive state universal service funding pursuant to Chapter 288. Section 504(2) relates to the taking and filing of balance sheets, and the exemption will reduce filing requirements for competitive carriers. We do not propose to exempt those carriers from Section 504(1), which is the date for closing accounts, because it is administratively simpler if all telephone utilities have the same reporting year. Section 504(3) allows the Commission to grant extensions from the subsection 2 filing deadline; thus, an exemption is unnecessary.

#### C. Section 3: Approval Of Stocks, Bonds, And Notes By Public Utilities Commission, Chapter 9

Pursuant to 35-A M.R.S.A. § 912, the Commission may adopt, by rule, standards and procedures for granting to a telephone utility or a specified group of telephone utilities an exemption or exemptions from all or specified portions of Chapter 9. Chapter 9 requires utilities to seek the Commission's approval for issuance of stocks, bonds and notes. We propose to exempt all CIXCs and CLECs from 35-A M.R.S.A. §§ 901-904, 907, 908, 910, and 911 unless they receive state universal service funding pursuant to Chapter 288. We do not actively regulate the rates for these telephone companies, and therefore we no longer need to regulate how the companies borrow money.

We do not include Sections 906 (applicable only to transmission and distribution utilities) or 909 (Commission approval not required for certain stock), as an exemption is unnecessary. Section 905 addresses the validity of stocks, bonds, notes or other evidences of indebtedness when issued or sold pursuant to or in reliance on and in accordance with any order, authorization or decision of the Commission pursuant

to Chapter 9.<sup>3</sup> We decide that this Rule, authorized by Section 912, constitutes a Commission “decision” pursuant to Chapter 9 for the purposes of Section 905. Therefore, a stock, bond, note or other form of indebtedness that is issued without Commission approval, but in reliance on the exemption in this Rule, will be valid.

D. Section 4: Authorization Of Sales, Leases, And Mortgages Of Property, Chapter 11

Pursuant to 35-A M.R.S.A. § 1105, the Commission may adopt, by rule, standards and procedures for granting to a telephone utility or a specified group of telephone utilities an exemption or exemptions from all or specified portions of Chapter 11. Chapter 11 requires utilities to obtain Commission authorization for sales, leases, and mortgages of property. We propose to exempt all CIXCs and CLECs from Sections 1101 and 1103 unless they receive state universal service funding pursuant to Chapter 288. We do not set the rates for these telephone companies and therefore we no longer need to regulate how they manage their property. We do not include Section 1102 in the list of exemptions because that section requires no Commission approval when property is not necessary or useful; therefore no exemption is necessary. We also do not propose, at this time, to exempt telephone utilities from Section 1104, Abandonment of Property or Service. Abandonment procedures will be addressed in a separate Commission rulemaking that will include additional issues related to abandonment.

E. Section 5: Revocation Of Exemptions

As permitted by the statutory provisions allowing these exemptions, we will maintain consumer protections by retaining the authority to revoke these

---

<sup>3</sup>Section 905 states:

Any stocks, bonds, notes or other evidences of indebtedness issued or sold pursuant to or in reliance on and in accordance with any order, authorization or *decision* of the commission pursuant to this chapter, and at least 5 business days after the date of the order, authorization or decision, shall be valid, binding and enforceable in accordance with their terms, including the terms of any agreement, instrument or document under or pursuant to which the stocks, bonds, notes or other evidences of indebtedness are issued, notwithstanding that the order, authorization or decision of the commission is later vacated, modified or otherwise held to be wholly or partly invalid, whether by the commission upon a petition for rehearing or reopening, or otherwise, or by a court, unless operation of the order, authorization or decision of the commission has been stayed or suspended by the commission or a court of competent jurisdiction prior to the issuance of the stocks, bonds, notes or other evidences of indebtedness. (Emphasis added)

exemptions for cause.<sup>4</sup> A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service. The proposed rule lists market share and market stability as circumstances that might be considered just cause for revoking an exemption.

#### **IV. REVISIONS TO CHAPTER 280 OF THE COMMISSION'S RULES**

We propose to delete Section 13, Applicability of Other Statutes, from Chapter 280 of our Rules. Section 13 refers to the approval requirements of Chapters 9 and 11. The rule proposed herein would waive those requirements for some carriers. Section 13 of Chapter 280 would therefore no longer be accurate.

#### **V. PROCEDURES FOR THIS RULEMAKING**

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058.

Written comments on the proposed rule may be filed with the Administrative Director no later than May 23, 2003. Please refer to the Docket Number of this proceeding, Docket No. **2002-598**, when submitting comments.

No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, on or before April 30, 2003.

#### **VI. FISCAL AND ECONOMIC EFFECTS**

"Fiscal Impact" is defined in 5 M.R.S.A. § 8063 as "the estimated cost to municipalities and counties for implementing or complying with the proposed rule." In accordance with 5 M.R.S.A. § 8057-A(1), the Commission expects no fiscal impact on municipalities or counties. However, we invite all interested parties to comment on the fiscal impact and all other implications of this Proposed Rule.

---

<sup>4</sup> For example, 35-A M.R.S.A. § 912, provides as follows: "For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section."

Dated at Augusta, Maine, this 10<sup>th</sup> day of April, 2003.

BY ORDER OF THE COMMISSION

---

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond